

**GOVERNMENT OF THE VIRGIN ISLANDS
OF THE UNITED STATES**

PUBLIC SERVICES COMMISSION

In re:

ETC Petition –
Centennial U.S.V.I. Operations
Corporation Pursuant to Act No.
6977

PSC Docket No. 574

HEARING EXAMINER'S REPORT

This proceeding involves a request by Centennial USVI Operations Corp. ("Centennial") to be designated as an "Eligible Telecommunications Carrier," or "ETC," for the United States Virgin Islands ("USVI") under the federal government's "universal service" program. Centennial provides "commercial mobile radio service," more commonly known as cell phone service, in the USVI. Centennial operates its wireless network in the USVI under the authority of spectrum licenses granted by the federal government.

As discussed below, the record in this matter clearly establishes that Centennial is qualified to be an ETC in the USVI, and that the public interest of the USVI would be served by granting Centennial's petition. I therefore recommend that the Public Services Commission ("Commission") designate Centennial as an ETC. The question of Centennial's designation as an ETC is discussed in Section I of this Report, below.

A related issue, somewhat more controversial, is what effective date the Commission should establish for Centennial's ETC designation. Centennial and the Commission staff agree that the public interest of the USVI would be served by granting Centennial an earlier effective date for its ETC designation. However, there is disagreement between Centennial and the staff regarding the Commission's legal authority to establish an early effective date. My analysis and recommendation on this issue is set out in Section II, below.

I. Centennial's Petition for ETC Status.

A. Statutory Background and Requirements.

The term "universal service" refers to the traditional federal policy, in the telecommunications industry, of taking steps to ensure that all parts of the United States (including possessions and territories such as the USVI) have widely available, high-quality telephone service. In general, the federal government has pursued this policy by providing financial subsidies (either directly or indirectly) to telephone companies that operate in areas where it is expensive to provide telephone service.

This federal policy is embodied in two provisions in the federal Communications Act: Section 254, and Section 214(e). 47 U.S.C. §§ 214(e), 254. Section 254 deals with the

definition of “universal service” and what state and federal regulators are supposed to do to clarify and expand on that definition over time. Section 214(e) deals with the designation of telephone companies as ETCs.

The “incumbent” telephone company – in the USVI, this is Innovative – will almost always be an ETC. The rules for designating additional, “competitive” ETCs are slightly different depending on whether the area for which ETC designation is sought is “rural” or not. If the area is not rural, then a state commission such as the USVI Public Services Commission must designate, as additional ETCs, any entity that is technically qualified.¹ If the area is rural, then the state commission may designate additional ETCs, if it finds that doing so is in the public interest. *See* 47 U.S.C. § 214(e)(2). The USVI is a rural area for these purposes.

Congress recognized that a state regulatory commission might not have legal jurisdiction over every entity that might seek to be an ETC. As a result, Congress included Section 214(e)(6) in the Communications Act. Section 214(e)(6) says that, if a state commission lacks jurisdiction over a particular entity seeking ETC status, the Federal Communications Commission (“FCC”) shall handle that entity’s request for ETC designation, using the same standards set out in Section 214(e)(2).

The Virgin Islands Code gives this Commission jurisdiction over all “telephone service.” 30 U.S.V.I Code § 1(c). The code does not contain a definition of “telephone service.” The Virgin Islands Code also states that the provisions of Chapter 30 (that is, the portions of the code dealing with public utilities) “shall be interpreted and construed liberally in order to accomplish the purposes thereof.” These provisions have been in effect for decades. Their potential application to this case is discussed in Section II of this Report, below.

Prior to December 22, 2007, nothing in the code specifically addressed either providers of wireless telephone service, such as Centennial, or the designation of ETCs. On December 6, 2007, the Virgin Islands Legislature passed Bill No. 27-0099, which the Governor signed, as Act No. 6977, on December 22, 2007. That Act added a new Section 47 to Chapter 30 of the Code. For ease of reference, the text of Section 47 is attached to this Report as Exhibit 1. In summary, however:

- Section 47(a) specifically empowers the Commission to grant requests for ETC status, including requests by wireless carriers such as Centennial, and specifically empowers the Commission to exercise continuing oversight over ETCs to ensure that they continue to meet applicable regulatory requirements.
- Section 47(b) establishes certain specific requirements that any ETC must meet. These are: (1) a commitment to provide service throughout the proposed area for which ETC status is granted, on a timely basis and within a reasonable period of time (including making adjustments to its network if appropriate); (2) submission of a 5-year plan showing specific network improvements to be made using universal service funds; (3) a

¹ For purposes of the federal Communications Act, territories and possessions are treated the same as states. *See* 47 U.S.C. § 153(40), which says that, in the Communications Act, “the term ‘State’ includes the District of Columbia and the Territories and possessions.”

demonstrated ability to remain functional in emergencies, including back-up power and alternative routing capabilities; (4) a demonstrated commitment to applicable consumer protection and service quality standards; and (5) an acknowledgement that the Commission may require the ETC to provide “equal access” to long distance carriers, if no other ETC is doing so.

- Section 47(c) requires the Commission to find that granting an ETC petition is in the public interest, including (1) the benefits of increased consumer choice and (2) the unique advantages and disadvantages of the applicant’s service offerings.
- Section 47(d) requires ETCs to retain records required to demonstrate to an auditor that the support received has been used consistently with the rules governing high-cost universal support.
- Section 47(e) calls on the Commission to act on an application within 60 days of receipt of a completed application.²

I discuss the application of these various statutory provisions to Centennial’s ETC petition below.

B. Procedural History.

Centennial began its quest for ETC status in the USVI in late 2004 or early 2005.³ At that time, Centennial was informally advised that the Commission did not have a mechanism for assessing Centennial for the costs of evaluating Centennial’s fitness to be designated as an ETC, and, therefore, was not in a position to conduct such an evaluation. As a result, Centennial asked for a letter stating that the Commission would not perform such an evaluation. It received a letter from a Commission representative stating that the Commission did not have jurisdiction over Centennial. That letter was not the result of any formal Commission ruling. There is no formal Commission order that holds that the Commission lacks jurisdiction over wireless carriers in general or over Centennial in particular.⁴

Based on the letter just noted, Centennial filed a petition with the FCC to be designated as an ETC for the USVI. This petition is included in the record as Document No. 6.⁵ The FCC

² In this case, Centennial’s attorney agreed on the record, at a Public Commission meeting held on January 24, 2008, that it would waive the protections of this provision, in order to accommodate the Commission, to the extent required to allow the Commission to vote on its petition on February 22, 2008. The procedural schedule adopted by the Commission calls for a vote on that date. Therefore, in light of Centennial’s waiver, by meeting its commitment to vote on Centennial’s application on that date, the Commission will have adequately complied with this provision of the new statute.

³ Transcript of Hearing, February 14, 2008 (“February 14 Transcript”), at page 19 (Testimony of Mr. Roughton).

⁴ Testimony of Mr. Roughton, February 14 Transcript at 19, 26-28.

⁵ At the February 14 hearing, it was agreed that each of the documents included on the Commission’s File Index for this proceeding was a part of the record of this proceeding. A copy

never made any decision with respect to this petition. On February 12, 2008, Centennial filed a letter with the FCC withdrawing it. Document No. 31.

As a result of the FCC's inaction, Centennial approached the Commission to determine what steps could be taken for the Commission, rather than the FCC, to act on Centennial's ETC petition. Specifically, during the second half of 2006, Centennial's representatives discussed with Commission representatives a proposal under which Centennial would voluntarily agree to submit to the Commission's jurisdiction (including, specifically, jurisdiction to be assessed the reasonable costs of conducting a review of the ETC petition and subsequent annual reviews). Mr. Roughton made a presentation regarding this proposal in November 2006. Based on instructions from Commission representatives, he transmitted a Centennial petition to be designated an ETC by this Commission to the Commission's representative on or about December 2, 2006.

Several things occurred in late 2006 and 2007 relevant to Centennial's petition to this Commission. On several occasions, including December 15, 2006, March 23, 2007, April 23, 2007, and November 2007, Centennial's petition was listed as an item on the Commission's agenda. Although the petition was discussed at those meetings, it was not approved or disapproved. Meanwhile, Centennial and Commission representatives were negotiating the terms of an agreement along the lines outlined above. *See* Document Nos. 15 and 16. In addition, in August 2007, representatives of the Commission testified before the Senate of the Virgin Islands Legislature that Centennial's petition was complete and would be voted on in the near future.

On December 6, 2007, the Virgin Islands Legislature passed Bill No. 27-0099, which contained new Section 47 of Chapter 30 of the Virgin Islands Code, which I summarized above. As noted above, the Governor signed this bill on December 22, 2007. Shortly thereafter, the Commission engaged the Georgetown Consulting Group to act as its technical consultant with respect to Centennial's pending petition.

On January 14, 2008, Centennial's petition was addressed at the Commission's regular meeting. At that meeting the Commission approved a schedule for this proceeding, which was later reflected in Commission Order No. 23/2008. *See* Document No. 21.

On January 29, 2008, Georgetown Consulting Group submitted its report on Centennial's petition.

On January 30, 2008, this Hearing Examiner issued a "Notice of Hearing and Schedule" which provided additional public notice of the deadline for filing public comments noted above, and of the hearing scheduled for February 14, 2008.

Pursuant to the approved schedule, public comments on Centennial's petition were filed by February 11, 2008 (*see* Document No. 23); Centennial and the Staff submitted their pre-filed

of that File Index, as amended at the hearing, is attached to this Report as Exhibit 2. I will refer to documents that are listed on the File Index by their Document Numbers, as included on that File Index.

written testimony on February 12, 2008 (*see* Document Nos. 27, 28, 29 & 30); and a hearing on Centennial's petition was held by this Hearing Examiner on February 14, 2008.

At the February 14 hearing, Centennial presented the testimonies of Mr. Ignacio L. Angulo, Centennial's Senior Vice President of Engineering & Wireless Technical Operations; Mr. Enrique Niggemann, Centennial's Vice President of Sales; and Mr. William L. Roughton, Jr., Centennial's Vice President of Legal and Regulatory Affairs. At the hearing, the Commission staff presented the testimony of Mr. Walter Schweikert, a representative of the Commission's consultant, Georgetown Consulting Group. In addition to presenting their written testimonies, at the hearing each of these witnesses was sworn in and provided oral testimony, in response to questions by both Centennial and the staff.

In addition, Centennial submitted a Motion for Confidential Treatment of its proprietary information submitted in connection with its Petition, as well as a Memorandum of Law relating to the date, as of which the Commission should make Centennial's ETC application effective.

This Report is based on the evidence and filings contained in the record, including the oral testimony provided at the February 14 hearing.

C. Summary of The Evidence.

1. Centennial's Petition.

Centennial states that it is a wholly owned subsidiary of Centennial Communications Corp., a publicly traded, independent, regional communications service provider. Centennial, through its affiliates, is experienced as an ETC. Its affiliates have been designated as ETCs in Puerto Rico, Indiana, Michigan, Mississippi, and Louisiana. In Louisiana, Centennial is the only entity that provides *any* telecommunications services in certain highly rural areas.

Centennial seeks designation as an ETC for the entire USVI. If designated as an ETC for the USVI, Centennial commits to improve its network in the USVI. Centennial states that the economics of operating a wireless network in the USVI make it economically unfeasible for Centennial to undertake these improvements without universal service support.

Centennial asserts that it satisfies each of the legal requirements for ETC designation. First, it states that it provides all of the services and functionalities supported by the federal universal service program, as enumerated in Section 54.101(a) of the FCC's rules, throughout the USVI.⁶ Once designated as an ETC, it will make Lifeline and Link-Up services available to qualifying low-income customers in the USVI, as required by Section 54.405 of the FCC's rules. Centennial will publicize the availability of Lifeline and Link Up in a manner reasonably designed to reach those USVI residents likely to qualify for the discounts. Centennial states that

⁶ These are: Voice-grade access to the public switched telephone network; local usage; dual tone multi-frequency signaling or its functional equivalent; single-party service or its functional equivalent; access to emergency services; access to operator services; access to interexchange service; access to directory assistance; and toll limitation for qualifying low-income consumers.

it now provides, or will provide upon ETC designation, the supported services throughout the USVI over its existing network infrastructure and spectrum.

In addition, Centennial states that its 5-Year Plan (discussed below) meets the applicable legal requirements by identifying specific the network and other improvements that it will make when it is certified as an ETC, but that will not occur in the absence of universal service support.

Centennial states that its will be able to remain functional during emergencies, and, in particular, severe weather emergencies (hurricanes and tropical storms) of the type that from time to time affect the USVI. Centennial has gained this experience by operating a highly reliable wireless system in Puerto Rico for many years, as well as wireless systems in parts of Mississippi and Louisiana, which are, and have been, subject to severe weather. Centennial states that, following one severe storm in Louisiana, Centennial's was the only network that remained functional — including large portions of the landline network.

Centennial states that it will satisfy consumer protection and quality standards. Centennial states that it was an original signatory to the Cellular Telecommunications Industry Association's Consumer Code for Wireless Service. It states that when a potential customer requests service within its existing network, Centennial will provide service immediately. If a potential customer requests service within Centennial's licensed service area, but outside its existing network coverage, it will (as necessary) (1) evaluate whether the requesting customer's equipment can be modified or replaced to provide service; (2) evaluate whether adjustments can be made to the nearest cell site to provide service; (3) evaluate whether adjustments that can be made to the existing network or customer facilities to provide service; and (4) evaluate whether an additional cell site, cell extender, or repeater can be deployed or constructed to provide service. If, after taking these steps, Centennial still is not able to provide service, it will notify the requesting party and include that information in an annual report to be filed with the Commission detailing how many requests for service were unfulfilled for the past year.

Centennial states that its local usage plans are comparable to those offered by the incumbent local exchange carrier (here, Innovative). In fact, because Centennial operates its Puerto Rico and USVI systems on an integrated basis, its USVI customers will automatically receive "local" calling privileges that include all of Puerto Rico as well as all of the USVI. Because Centennial's calling plans include Puerto Rico and large nationwide buckets of minutes, Centennial offers a larger local calling area than the landline local telephone company.

Centennial states that it understands that if no other ETC were to provide equal access to long distance carriers, Centennial may be required to provide equal access to its customers.

Centennial also states that its designation as an ETC is in the public interest. According to Centennial, designating it as an ETC will benefit residents of the USVI in many ways. These include: mobility; safety (by virtue of access to 911 via a mobile phone); offering large buckets of minutes on one bill; a large local calling area; access to advanced services such as text messaging; and the benefits to be derived from additional competition for basic telecommunications capabilities. In addition, Centennial commits to comply with additional

reporting requirements to allow the Commission to ensure that Centennial is satisfying its obligation under Section 214(e) on an ongoing basis.⁷

Finally, Centennial's Petition includes certain specific certifications as required by the FCC's rules.

2. Centennial's 5-Year Plan.

Centennial's 5-Year Plan has been submitted as a confidential document. As noted above, Centennial has filed a motion seeking that the Commission continue to treat this information as confidential. At the February 14 Hearing, the Staff indicated that it had no opposition to granting that Motion, and I recommend that the Commission do so.

Without discussing any specific confidential information, Centennial's 5-Year Plan provides detailed maps showing the current location of its cell sites in the USVI, and well as the cellular coverage derived from those cell sites. It provides a year-by-year explanation of what cell sites and other improvements to its network it would make, as well as including maps showing the improvements in coverage that would result. It explains how its cellular network is connected to its cellular switching device (located in Puerto Rico) and how those connections would be improved if universal service funding is made available. And it explains the steps it will take to improve its marketing presence with consumers, to ensure that consumers, particularly low-income consumers, are made aware of the fact that Centennial offers the services supported by universal service.

3. The Georgetown Consulting Group Report.

GCG summarized its recommendations as being that Centennial's Petition should be granted, and that Centennial be designated as an eligible telecommunications company throughout the entire territory of the USVI under Section 214(e) of the Federal Act, subject to certain conditions. Centennial should:

⁷ Specifically, Centennial will submit to the Commission and the Universal Service Administrative Company, records and documentation, on an annual basis, detailing: (1) its progress towards meeting its build-out plans in the USVI; (2) its outages in the USVI lasting at least 30 minutes that potentially affect at least 10 percent of end users in Centennial's service area, or that potentially affects a 911 special facility; (3) the number of requests for service from potential customers in the USVI that were unfulfilled during the past year, including a description of how Centennial attempted to provide service to those customers; and (4) the number of complaints it receives per 1,000 mobile handsets in the USVI. Centennial will also provide the Commission and USAC with certification that it (1) continues to satisfy consumer protection and quality standards and to comply with the CTIA Consumer Code for Wireless Service; (2) maintains the ability to remain functional in emergency situations; (3) continues to offer a local usage plan comparable to that offered by the local incumbent LEC in the USVI; and (4) acknowledges that it may be required to provide equal access to its customers if the incumbent LEC relinquishes its ETC status and there are no other ETCs in the USVI.

(1) Withdraw its pending ETC designation petition before the FCC prior to the Commission hearing date (this has already occurred – see Document No. 31);

(2) Comply with any FCC or Commission requirements concerning E911 service when implemented in the USVI;

(3) Notify the Commission within thirty (30) days of any determination that it cannot provide service to a requesting customer in accordance with the FCC's requirements;

(4) Certify to the Commission, on August 31 of each year, beginning August 31, 2008, that Centennial (a) offers all of the services designated by the FCC for support pursuant to Section 254(c) of the Federal Act either using its own facilities or a combination of its own facilities and resale and (b) advertises the availability of supported services and the charges thereof using media of general distribution as described in its petition;

(5) File its annual certification with the Commission in substantially the same form described in Section 54.314(b) and 54.314(c) of the FCC's rules;

(6) Submit to the Commission on August 31 of each year, beginning August 31, 2008, the following records and documentation: (a) Centennial's progress towards meeting its build-out plans consistent with the funds received based on the effective date of designation; (b) information on any outage lasting at least 30 minutes and potentially affecting either at least 10 percent of the end users served or 911 facilities; (c) the number of requests for service from potential customers within Centennial's service area that were unfulfilled for the past year; (d) the number of complaints per 1,000 handsets; (e) Centennial's compliance with the CTIA Consumer Code; (f) Centennial's certification that it is able to function in emergency situations; (g) Centennial's certification that it is offering a local usage plan comparable to that offered by the incumbent local exchange carrier; and (h) Centennial's certification that it acknowledges that the Commission may require it to provide equal access to long distance carriers in the event that no other ETC is providing equal access in the service area.

(7) Promptly submit to the Commission any additional information or reports that that Commission may reasonably request from time to time.

(8) Comply with the record retention requirements contained in Chapter 30, §47(d) of the Virgin Islands Code.

GCG also recommends that the Commission should monitor Centennial's progress in implementing its Five-Year Plan consistent with the amount of funding received. This monitoring can be performed as part of the annual certification process. However, consistent with FCC practice, the Commission should reserve jurisdiction and authority to (a) institute an inquiry on its own motion to examine Centennial's records and documentation to ensure that the high-cost support it receives is being used "only for the provision, maintenance, and upgrading of facilities and services" in the USVI, (b) revoke Centennial's ETC designation if it fails to fulfill any requirements of Section 214 of the Federal Act, the FCC's rules and regulations or the Commission's order after Centennial begins receiving universal service support and (c) assess penalties for violations of the Commission's rules and orders.

GCG recommends that the effective date of Centennial's designation be December 2, 2006 or the earliest date consistent with Virgin Islands law. (I discuss this matter in Section II, below.)

4. Public Comments.

Eleven members of the public submitted written comments in this matter. *See Document No. 23.* All of these comments expressed support for granting Centennial's petition to be designated as an ETC.

5. Centennial's Testimony.

Centennial's witness Mr. Niggemann (Centennial's Vice President of Sales) explained his role in developing Centennial's 5-Year Plan and explained that if Centennial is designated as an ETC, it will open additional retail outlets in the USVI, adding jobs to the USVI economy.

Centennial's witness Mr. Angulo (Centennial's Senior Vice President of Engineering & Wireless Technical Operations) explained his role in developing the 5-Year Plan. He also explained how Centennial would adjust the plan based on different possible scenarios regarding possible limits the FCC might impose on the availability of universal service funding. He stated that if Centennial is designated as an ETC as of an earlier date, and receives additional funds beyond those assumed in developing the 5-Year Plan, Centennial would accelerate the specific network improvements in the plan, and then develop additional improvements to be undertaken in the later years of the plan. On the other hand, if FCC actions limit the amount of funding available, Centennial would, in effect, spread out the projects identified in the earlier years of the plan over a longer period of time.

Centennial's witness Mr. Roughton explained the history of Centennial's efforts to be designated an ETC in the USVI. In addition, he explained the current situation in which the FCC is considering imposing a "cap" on the amount of funding that might be available to "competitive" ETCs, such as Centennial. He explained why, in his view, it would help maximize the chance that Centennial in the USVI could receive full funding from the universal service fund if Centennial's ETC petition were deemed granted as of an early date, such as December 2, 2006 (when Mr. Roughton submitted Centennial's petition to Commission representatives) or April 28, 2005 (when Mr. Roughton submitted Centennial's petition to the FCC). Under questioning from the Commission's counsel, Mr. Roughton agreed that it would be good if the FCC were to adopt an order that "carves out" the USVI from the operation of any cap on competitive ETC funding, along the lines that are apparently being considered, at the FCC, for Hawaii and Alaska.

Upon questioning from the Commission's counsel regarding the average amount of time it took to decide ETC status by the FCC, Mr. Roughton stated that in the past it had taken on average of six months, however, he further testified that since the FCC had begun its review and reconsideration of the Universal Service Fund, the FCC had not acted on any pending ETC designation petitions. When asked how long on average it took states to determine ETC status, Mr. Roughton stated that it too on average a maximum of eight months. (Testimony of Mr. Roughton at February 14, 2008 Hearing, Transcript pgs. 19-20, 29-30.)

Mr. Roughton also testified that in 2005, there was no formal docket opened to review the information submitted to the Commission by Centennial. He indicated that a representative from the Commission and Centennial's counsel at that time held informal conversations, wherein a letter was requested from the Commission indicating the Commission's stance on the issue of jurisdiction. The Commission's letter, dated as of April 19, 2005, was submitted to the FCC with Centennial's formal petition for ETC designation. (Testimony of Mr. Roughton at February 14, 2008 Hearing, Transcript pgs. 29-30.)

6. PSC Staff's Testimony.

Commission staff presented the testimony of Mr. Walter Schweikert, the principal author of the GCG Report stated above. Mr. Schweikert's testimony generally paralleled the content of the GCG Report. Under questioning from Centennial's counsel, Mr. Schweikert agreed that it would be good for the USVI if Centennial's ETC designation were granted as of an early date, as noted above, because this would allow additional funds to be invested in the USVI telecommunications infrastructure.

Mr. Schweikert, in his Direct Testimony, addressed the scope of the Commission's authority over ETC designations, indicating that the PSC determined in 2005 that it did not have jurisdiction over wireless carriers. The Commission wrote a letter to the FCC on April 19, 2005 stating that it would not consider a potential request by Centennial for an ETC designation at that time. Mr. Schweikert also stated that there was no change in this position until the Governor signed the amendment to Title 30 into law. He specifically stated that the use of the phrase "To clear any confusion on this matter, the Governor of the USVI signed the ETC amendment of Title 30 of the USVI into law" in his final report was not intended to convey any position with respect to Centennial's argument that the PSC always had the jurisdiction to grant an ETC designation to a wireless carrier. Rather, he intended that it was clear that the PSC had such authority after passage of the amendment.

Additionally, in response to questions from the Commission's Counsel regarding the issue of retroactivity, in his direct testimony Mr. Schweikert testified that he was not aware of any retroactive designations exceeding one year that had been accepted by the FCC and USAC. He stated that in reviewing a sample of FCC and state designation orders and petitions for waiver, he did not find any applications for ETC designation with an effective date greater than one year before the date the petition was granted. Most have been a matter of a few months.

Finally, Mr. Schweikert testified that although Centennial first approached the Commission about applying for an ETC designation in early 2005, Centennial apparently did not file a formal petition with the Commission at that time. Instead, it secured the April 19, 2005 letter referenced earlier. With the PSC letter in hand, Centennial then filed its petition with the FCC. The FCC having not acted in a timely manner, Centennial then went back to the PSC on or about December 2, 2006. That petition was the only one filed with the PSC.

D. Findings of Fact and Conclusions of Law.

Based on the foregoing, I recommend that the Commission adopt the following Findings of Fact and Conclusions of Law:

1. Pursuant to 47 U.S.C. § 214(e)(2), the Commission is generally responsible for designating a telecommunications carrier as an ETC within the USVI in accordance with the requirements of the Federal Act. Act No. 6977, signed into law December 22, 2007, amended Title 30 of the Virgin Islands Code to specifically grant the Commission the authority to designate CMRS operators as ETCs.

2. The Federal Act provides that the Commission may designate a telecommunications carrier as an ETC if the following requirements are satisfied:

(a) the carrier offers services that are supported by the federal universal service support mechanism, either using its own facilities or a combination of its own facilities and resale of another carrier's services;

(b) the carrier advertises the availability of such services and the charges therefore using media of general distribution; and

(c) the designation of such carrier as an ETC is in the public interest (if such carrier is seeking designation for an area served by a rural telephone company that has already been designated as an ETC).

3. Centennial certifies that it is authorized to provide commercial mobile radio service everywhere in the USVI. Centennial also certifies that: "Centennial will provide the supported services to any USVI customer making a reasonable request for those services"; "Centennial will provide the supported services using its own facilities and its existing network infrastructure, which includes the same antenna, cell site, tower, trunking, mobile switching and interconnection facilities used by Centennial to serve its USVI customers."; and "Centennial will advertise the availability of the supported services and the corresponding charges in a manner that fully informs the general public within the designated service area of the services and charges." Centennial currently advertises its services using media of general circulation.

4. With respect to supported access to emergency service, Centennial indicates that it currently offers emergency 911 services and is in the process of implementing E911 service. . However, to the extent a governmental authority in the USVI implements E911 systems, Centennial will be required to provide E911 service. Therefore, the Commission finds that any designation of Centennial as an ETC be conditioned on Centennial's compliance with any FCC or Commission requirements concerning E911 service when implemented in the USVI.

5. On March 17, 2005, the FCC adopted additional requirements for ETC designation proceedings in which the FCC acts pursuant to 47 U.S.C. § 214(e)(6).⁸ All carriers seeking ETC designation from the FCC must satisfy these requirements. Title 30 of the VI Code, as amended,

⁸ *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, FCC 05-46 (released March 17, 2005) (the "ETC Designation Order").

contains substantially the same requirements for CMRS carriers seeking an ETC designation from the Commission. The differences between the FCC requirements and Commission requirements are not material in this proceeding.

6. Pursuant to the additional requirements adopted by the FCC in the *ETC Designation Order*,⁹ any applicant for ETC designation must:

(1) (i) Commit to provide service throughout its proposed designated service area to all customers making a reasonable request for service. Each applicant shall certify that it will:

(A) Provide service on a timely basis to requesting customers within the applicant's service area where the applicant's network already passes the potential customer's premises; and

(B) Provide service within a reasonable period of time, if the potential customer is within the applicant's licensed service area but outside its existing network coverage, if service can be provided at reasonable cost by:

- (1) Modifying or replacing the requesting customer's equipment;
- (2) Deploying a roof-mounted antenna or other equipment;
- (3) Adjusting the nearest cell tower;
- (4) Adjusting network or customer facilities;
- (5) Reselling services from another carrier's facilities to provide service; or
- (6) Employing, leasing or constructing an additional cell site, cell extender, repeater, or other similar equipment.

(ii) Submit a five-year plan that describes with specificity proposed improvements or upgrades to the applicant's network on a wire center-by-wire center basis throughout its proposed designated service area. Each applicant shall demonstrate how signal quality, coverage or capacity will improve due to the receipt of high-cost support; the projected start date and completion date for each improvement and the estimated amount of investment for each project that is funded by high-cost support; the specific geographic areas where the improvements will be made; and the estimated population that will be served as a result of the improvements. If an applicant believes that service improvements in a particular wire center are not needed, it must explain its basis for this determination and demonstrate how funding will otherwise be used to further the provision of supported services in that area.

⁹ It is important to note that while the Commission has not adopted these federal standards at this time through rule promulgation, nonetheless Centennial's petition satisfies these requirements.

(2) Demonstrate its ability to remain functional in emergency situations, including a demonstration that it has a reasonable amount of back-up power to ensure functionality without an external power source, is able to reroute traffic around damaged facilities, and is capable of managing traffic spikes resulting from emergency situations.

(3) Demonstrate that it will satisfy applicable consumer protection and service quality standards. A commitment by wireless applicants to comply with the Cellular Telecommunications and Internet Association's Consumer Code for Wireless Service will satisfy this requirement. Other commitments will be considered on a case-by-case basis.

(4) Demonstrate that it offers a local usage plan comparable to the one offered by the incumbent local exchange carrier in the service areas for which it seeks designation. This requirement is not contained in Title 30.

(5) Certify that the carrier acknowledges that the FCC may require it to provide equal access to long distance carriers in the event that no other eligible telecommunications carrier is providing equal access within the service area.

7. Except as provided below, the Commission finds that Centennial has satisfied all of the additional mandatory requirements set forth in the *ETC Designation Order* and Title 30. First, Centennial has certified that it will provide service throughout the USVI to all customers making a reasonable request for service. In this regard, Centennial has committed that it will notify the Commission within thirty (30) days of any determination that it cannot provide service to a requesting customer in accordance with the FCC's requirements. Second, Centennial has certified that it has a reasonable amount of back-up power, the ability to reroute traffic and the capability to manage traffic spikes to remain functional in emergency situations. Centennial has also demonstrated that its network facilities connecting the islands of St. Croix, St. John and St. Thomas are fully redundant and resistant to extremes of weather such as hurricanes. Third, Centennial has committed to comply with the CTIA Consumer Code. Fourth, Centennial has indicated that it offers a variety of rate plans to its universal service customers that include some level of local usage. One such plan includes unlimited local usage. Fifth, Centennial has certified that it acknowledges that the FCC may require it to provide equal access to long distance carriers in the event that no other eligible telecommunications carrier is providing equal access within the service area.

8. Centennial has also submitted a five-year plan that describes proposed improvements or upgrades to its network in detail. The plan describes improvements on a wire-center-by-wire-center or cell tower-by-cell tower basis and provides the estimated amount of investment for each project that is funded by high-cost support.

9. For the public interest determination, the *ETC Designation Order* provides that the Commission should consider the benefits of increased consumer choice, and the unique advantages and disadvantages of the ETC applicant's service offering. In instances where an ETC applicant seeks designation below the study area level of a rural telephone company, the Commission must also conduct a cream-skimming analysis that compares the population density of each wire center in which the ETC applicant seeks designation against that of the wire centers in the study area in which the ETC applicant does not seek designation.

10. The Commission believes that Centennial's universal service offering may provide a variety of benefits to customers in the USVI, including consumer choice and advantageous service offerings. For instance, universal service support will help Centennial construct facilities in un-served and under-served areas, and to improve quality of service. In addition, Centennial has indicated that it will use support to offer a basic universal service package to subscribers who are eligible for Lifeline support and Centennial has made detailed commitments to provide high quality service throughout the USVI. The mobility of Centennial's wireless service will provide further benefits to consumers, such as access to emergency services in geographically isolated areas. Finally, given the size of the federal universal service fund, the Commission believes it is unlikely that Centennial's ETC designation would have an adverse impact on the federal universal service fund.

11. Because Centennial seeks ETC designation for the entire USVI and not below the study area level of the incumbent local exchange carrier, the cream-skimming analysis required by the *ETC Designation Order* is not required.

12. Centennial is obligated under Section 254(e) of the Federal Act to use high cost support "only for the provision, maintenance, and upgrading of facilities and services for which support is intended" and is required under Section 54.314 of the FCC's rules to certify annually that it is in compliance with this requirement. Centennial has certified to the Commission that, "Centennial will use all federal USF support only for the provision, maintenance, and upgrading of facilities and services for which support is intended pursuant to Section 254(e) of the Act."

13. Centennial has committed to submit to the Commission on an annual basis the following records and documentation, in addition to any other information or reports that that Commission may reasonably request from time to time:

- Centennial's progress towards meeting its build-out plans;
- Information on any outage lasting at least 30 minutes and potentially affecting either at least 10 percent of the end users served or 911 facilities;
- The number of requests for service from potential customers within Centennial's service area that were unfulfilled for the past year;
- The number of complaints per 1,000 handsets;
- Centennial's compliance with the CTIA Consumer Code;
- Centennial's ability to function in emergency situations;
- Centennial's certification that it is offering a local usage plan comparable to that offered by the incumbent local exchange carrier; and
- Centennial's certification that it acknowledges that the Commission may require it to provide equal access to long distance carriers in the event that no other ETC is providing equal access in the service area.

14. The Commission finds that Centennial must submit these records and documentation to the Commission on August 31 of each year, beginning August 31, 2008. Consistent with FCC requirements: (1) the progress report should include maps detailing progress towards meeting Centennial's five-year service quality improvement plan, explanations of how much universal service support was received and how the support was used to improve service quality in each wire center or cell tower for which designation was obtained, and an explanation of why any network improvement targets have not been met; and (2) the information on Centennial's outages should include the date and time of onset of the outage, a brief description of the outage, the particular services affected by the outage, the geographic areas affected by the outage and steps taken to prevent a similar outage situation in the future. The Commission finds that Centennial must provide additional information and reports to the Commission when requested by the Commission or its staff from time to time.

15. The Commission finds that consistent with Title 30 §47(d), Centennial must retain all records required to demonstrate to auditors that the support received was used as intended. Specifically, this includes data supporting counts of lines or accounts, historical customer records, fixed asset property accounting records, general ledgers, copies of invoices for purchase and maintenance of equipment, maintenance and construction contracts for the upgrading or purchase of equipment and any other documents supporting the use of universal service funds received. These documents must be retained for five years from the receipt of funding.

16. The Commission finds that Centennial has voluntarily offered to pay the Commission's expenses in connection with this proceeding and the annual recertification proceedings once it has been granted an ETC designation.

Based upon the foregoing, I recommend that the Commission order as follows:

1. Centennial is hereby designated as an ETC throughout the USVI subject to the following conditions:

(a) Centennial must comply with any FCC or Commission requirements concerning E911 service when implemented in the USVI;

(b) Centennial must notify the Commission within thirty (30) days of any determination that it cannot provide service to a requesting customer;

(c) Centennial must certify to the Commission on August 31 of each year, beginning August 31, 2008, that Centennial (i) offers all of the services designated by the FCC for support pursuant to Section 254(c) of the Federal Act either using its own facilities or a combination of its own facilities and resale and (ii) advertises the availability of supported services and the charges therefore using media of general distribution as described in its petition;

(d) Centennial must file its annual certification with the Commission in substantially the same form described in Section 54.314(b) and 54.314(c) of the FCC's rules;

(e) Centennial must submit to the Commission on August 31 of each year, beginning August 31, 2008 the following records and documentation: (i) Centennial's progress

towards meeting its build-out plans; (ii) information on any outage lasting at least 30 minutes and potentially affecting either at least 10 percent of the end users served or 911 facilities; (iii) the number of requests for service from potential customers within Centennial's service area that were unfulfilled for the past year; (iv) the number of complaints per 1,000 handsets; (v) Centennial's compliance with the CTIA Consumer Code; (vi) Centennial's certification that it is able to function in emergency situations; (vii) Centennial's certification that it is offering a local usage plan comparable to that offered by the incumbent local exchange carrier; and (viii) Centennial's certification that it acknowledges that the Commission may require it to provide equal access to long distance carriers in the event that no other ETC is providing equal access in the service area.

(f) Centennial must promptly submit to the Commission any additional information or reports that that Commission may reasonably request from time to time.

(g) Centennial must comply with the record retention requirements contained in Title 30, §47(d) of the VI Code.

2. The Commission reserves jurisdiction and authority to (a) institute an inquiry on its own motion to examine Centennial's records and documentation to ensure that the high-cost support it receives is being used "only for the provision, maintenance, and upgrading of facilities and services" in the USVI, (b) revoke Centennial's ETC designation if it fails to fulfill any requirements of Section 214 of the Federal Act, the FCC's rules and regulations or the Commission's order after Centennial begins receiving universal service support and (c) assess penalties for violations of the Commission's rules and orders.

3. Centennial shall reimburse the Commission for its expenses in connection with this proceeding, the annual ETC recertification proceedings and any inquiry in furtherance of paragraph 3 above.

II. Effective Date of ETC Designation.

The question of the effective date of Centennial's ETC designation has potentially very significant practical consequences. Putting legal questions aside, the earlier the effective date of Centennial's designation, the greater the amount of funding that will be available for investment in the USVI telecommunications infrastructure. Mr. Roughton has testified that Centennial's anticipated universal service support will be approximately \$1 million per year. Assuming that the earliest possible effective date for Centennial's ETC designation is December 2, 2006 (the date Centennial submitted its application to the VI Public Services Commission) and that the latest possible date is February 22, 2008 (the date the Commission is scheduled to vote in this proceeding), the difference is about one year and two months, or about \$1.17 million.

For this reason, I agree completely with Staff witness Mr. Schweikert, who testified that the Commission should make Centennial's ETC certification effective on "the earliest date allowed by law." The question is, what is that date?

The question arises because, as noted above, prior to the enactment of new Section 47 of the law, nothing in the Virgin Islands Code expressly granted this Commission the authority to

designate entities as ETCs, and nothing in the Code expressly granted this Commission the authority to exercise any regulatory authority over wireless carriers. Moreover, as noted above, in 2005 when Centennial originally approached representatives of the Commission regarding ETC status, the Commission provided a letter which stated that the Commission did not have jurisdiction over wireless carriers and so would not handle Centennial's ETC request. In 2005 there was no petition for ETC designation filed with the Commission, therefore the Commission could not and cannot grant designation as of that date.

The fact that the Code did not mention anything about certifying ETCs until the enactment of Section 47 is not determinative. Long before the enactment of Section 47, the incumbent landline carrier, Innovative, was designated as an ETC and has been receiving federal universal service support on that basis. Therefore, the Commission's general regulatory power, even before Section 47, could have been asserted as a basis to allow us to grant ETC status to entities over which we have jurisdiction. The question then becomes, did we have jurisdiction over a wireless carrier, such as Centennial, prior to the enactment of Section 47, for purposes of ETC designations?

Section 1(c) of Chapter 30 states that we have authority over "telephone service." It is my opinion that nothing in that term excludes wireless services. In addition, as Centennial points out in its Memorandum of Law on this point, as early as 1960, the USVI Attorney General issued an opinion in which he indicated that radio telephone service – the precursor to Centennial's cellular service – would probably be considered "telephone service." I treat this information as merely informative and potentially persuasive authority and not binding authority for the Commission, as the Commission is the body charged with making these findings of facts as to its authority. Nonetheless, I find it helpful to demonstrate or underscore the possibility that perhaps the Commission had a broader range of authority than it previously found.

Moreover, although the Commission indeed wrote a letter stating that the Commission did not have jurisdiction over wireless services, the Commission is empowered to reconsider its views on this and all other issues, if the Commission deems such reconsideration appropriate and necessary.

For all these reasons, I recommend that the Commission conclude that it has always had the authority to designate CMRS providers as an ETC, even before the enactment of Section 47. That provision expressly confirms our authority, and directs that we take certain steps when designating ETCs.

On this basis, I recommend that the Commission grant Centennial's request for ETC status with an effective date of December 2, 2006, the date of Centennial's initial formal submission of its ETC request to the Public Services Commission.

There is also another important practical reason for using the earlier effective date. The FCC is now considering a "cap" on the funding available to competitive ETCs. It is impossible to know what the FCC will do. However, the proposal is to limit the amount of funding available to competitive ETCs to the amount that they received in 2006. If Centennial's ETC designation is established for a date that is in 2006, that maximizes the chance that, even if the

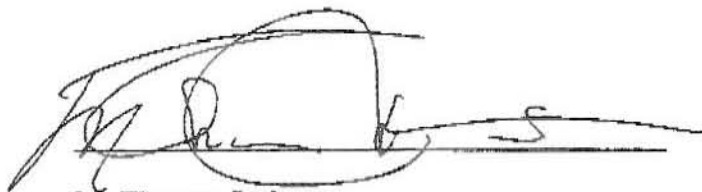
FCC's "cap" proposal is adopted, universal funding would still be available for the USVI. This reason, as well, supports deeming Centennial's ETC status effective as of December 2, 2006.

While I conclude that the earlier designation will ultimately be in the public interest of the Territory and the People of the Virgin Islands, and I so find, and the FCC has previously recognized retroactive designations, I acknowledge that the length of time for this retroactive designation may raise concerns. However, given the change in policy and jurisdiction inherent in this matter, the actual date of the submission of the Petition for Designation is recommended.

Finally, as was discussed at the February 14 hearing, staff and Centennial both agree that the Commission should communicate with the FCC to seek to have the USVI excluded from the operation of any "cap" that the FCC might adopt. I recommend that the Commission take all steps necessary (including public filings with the FCC) requesting that, in light of the specific circumstances of the USVI, the USVI be excluded from any such "cap."

III. Conclusion.

The Commission should grant Centennial's ETC petition, subject to the conditions discussed in this Report. The Commission should deem that Centennial's ETC status be effective as of December 2, 2006. In addition, the Commission should communicate with the FCC to explain that the USVI should be exempt from any "cap" on funds available to competitive ETC that the FCC might adopt.

A handwritten signature in black ink, appearing to read 'M. Thomas Jackson', with a large, sweeping loop at the end.

M. Thomas Jackson

Hearing Examiner